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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/308,515    08/11/99    BLACK

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EXAMINER
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IM52/0829

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GUARRIELLO, J.	
ART UNIT	PAPER NUMBER

1771

DATE MAILED:

08/29/01

*Handwritten number 9*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/308515

Applicant(s)

Black

Examiner

John Guarriello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6/8/2004
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-17 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges paper # 8, the extension of time, and the amendment of 6/8/2001.
16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

17. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

18. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claim 1 has been changed from "polyester" to "polymer". This change is new matter because this is broader in scope than the disclosure.

19. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

20. Claims 2, 8, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 1, it is not clear what the correct antecedent basis is since "polymer" is in claim 1 not "polyester".

In claim 8, line 2, it is not clear what the correct antecedent basis is for the same reason given in claim 2.

In claim 9, line 2, it is not clear what the correct antecedent basis is for the same reason given in claim 2.

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*Claim Rejections - 35 USC § 103*

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-8-172044.

JP'224 describes a biconstituent fiber (which can be considered a blend or mixture and can be considered conjugate) of a disperse dye polymer with cellulosic fibers (which can be saw tooth crimped) which are spun from an organic solvent system (like a non-woven fiber), (see abstract). JP'224 describes the biconstituent fiber (blend) can be a polyester, like polyethylene terephthalate, sulphonic acid-modified polyethylene terephthalate or polybutylene terephthalate, (page 3, column 1, lines 11-15 of the JP'224

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document, as noted by an oral translation by Japanese translator; further noted on page 1, lines 19-27 in GB 2324064 which cites the abstract to JP -A-8-170224. JP'224 describes the spinning process, (see abstract). JP'224 describes the cellulosic polymer type of which lyocell is known as a generic term for solvent spun cellulose polymer. JP'224 describes 2-45% by weight of the cellulose type polymer, (see cite in GB'064, page 1, lines 24-25). JP'224 differs from the claimed invention because it is silent about non-woven.

It would have been obvious to one of ordinary skill in the art at the time the invention was made make a non-woven from the fibers since this is considered to be routine in the fabric art.

***Claim Rejections - 35 USC § 103***

22. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-8-170224 in view of GB 1486639.

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JP'224 as above with the difference being that JP'244 is silent about the amount of cellulosic fiber being as high as 80% by weight and being used for bedding and clothing articles.

GB'639 describes non-woven fabrics of regenerated cellulose with polyester which can be used in the clothing industry, (page 1, column 1, lines 17-36; column 2, lines 44-59). GB'639 describes use in the clothing industry, (page 2, column 1, lines 21-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify JP'224 with the non-woven fabrics of GB'639 motivated with the expectation that the clothing would be improved. Regarding the bedding it would have been obvious to one of ordinary skill to optimize the fabric for bedding since there is no defined structure for the fabric.

23. Rejections not maintained are withdrawn, namely Daniel et al. 5,928,973 since applicant's arguments were persuasive.

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24. Applicant's submission of the abstract is acknowledged.

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

26. Any inquiry concerning this communication or earlier communications



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from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

August 19, 2001

August 27, 2001



CHERYL JUSKA  
PATENT EXAMINER